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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91226866
Party	Plaintiff PepsiCo, Inc.
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Date	11/15/2016
Attachments	OFFICIAL SNACK OF FOOTBALL- First Amended Notice of Opposition.pdf(40800 bytes )

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

_____	)	
PEPSICO, INC.	)	In the Matter of Application
	)	Serial No. 86641232 for the
Opposer,	)	Mark OFFICIAL SNACK OF FOOTBALL
	)	
v.	)	
	)	
KELLOGG NORTH AMERICA	)	Opposition No. 91226866
COMPANY	)	
	)	
Applicant.	)	
_____	)	

**FIRST AMENDED NOTICE OF OPPOSITION**

Opposer, PepsiCo, Inc., a North Carolina corporation having a place of business at 700 Anderson Hill Road, Purchase, New York 10577, believes that it will be damaged by the registration of United States Trademark Application Serial No. 86/641,232, filed May 26, 2015, in the name of Kellogg North America Company (hereinafter “Applicant”) for the mark OFFICIAL SNACK OF FOOTBALL based on an intention to use the mark on or in connection with “Potato crisps and chips; potato-based snack foods; vegetable-based snack foods; fruit-based snack foods; nut-based snack foods; trail mix consisting primarily of processed nuts, seeds, dried fruit and also including chocolate” in International Class 29, and “Cereal-based snack foods; multigrain-based snack foods; cereal bars; cereal-based energy bars; cookies; crackers; granola; granola bars; processed cereal to be used as a breakfast food, snack food or ingredient for making food; trail mix consisting primarily of granola, and also including dried fruit, chocolate, processed nuts; tortilla chips” in International Class 30 (the “Mark” or “Application”). The Application was published in the Official Gazette on September 15, 2015,

and after Opposer was properly granted extensions of time to oppose, it hereby opposes the Application on the following grounds:

1. For over 50 years, Opposer PepsiCo, Inc., through its related companies and wholly-owned subsidiaries, including Frito-Lay North America, Inc., (hereinafter individually and/or collectively referred to as “Opposer”), has been engaged in the manufacture and sale of a wide variety of foods and beverages, including each of the snack food products recited in the Application. Opposer is one of the largest manufacturers of snack foods in the United States and in many countries throughout the world.

2. Opposer’s snack foods are marketed and sold in tremendous quantities on a nationwide basis, supported by hundreds of millions of dollars of advertising and promotion each year. Opposer’s products are sold in almost every supermarket in the United States as well as in numerous convenience stores, vending machines, mass merchandise stores, sporting venues, stadiums, schools, online and other outlets.

3. Opposer is an official sponsor of the National Football League (“NFL”) and spends a significant amount of money advertising and promoting its snack food and beverage products in connection with its official sponsorship status with the NFL and the NFL’s televised professional football games and entertainment services.

4. Pursuant to Opposer’s official NFL sponsorship, within the snack food category, Opposer is permitted to refer to itself, among other titles, as “The Official Sponsor of the NFL”, “The Official Salty Snack of the NFL”, “Official Crunch of the NFL” and any of these titles in connection with other NFL Events.

5. Opposer is the exclusive licensee of the mark THE OFFICIAL SALTY SNACK OF THE NFL. Opposer has been offering snack foods under the mark THE OFFICIAL SALTY

SNACK OF THE NFL since at least as early as 2000. Opposer has the exclusive right to use the mark THE OFFICIAL SALTY SNACK OF THE NFL in connection with various products, including among others, potato chips, snack chips and crisps, tortilla chips, fried crisps form corn, puffed snacks, grain and multi-grain chips, nuts, seeds, pretzels, salsa and dips, trail and snack mixes, popcorn, crackers, pita, bagel and soy-based snacks, fruit and vegetable chips or crisps, meat based snacks such as jerky, beef sticks, pork rinds, and pork cracklins.

6. On information and belief, NFL football games and events, including the Super Bowl, are among the most watched television broadcasts in the United States and are well-known by the general public.

7. Opposer is also an official sponsor of specific NFL teams, individual players, college football teams, football stadiums and is currently, or has been, the title sponsor of high profile college football championship bowl games.

8. As a result of Opposer's extensive advertising and promotion during televised NFL games and events, as well as sponsored college football games, consumers and the general public recognize and closely associate Opposer and Opposer's snack foods with football and the NFL, in particular.

9. Applicant's filing of its trademark application and Applicant's intended use of the OFFICIAL SNACK OF FOOTBALL Mark are without the consent or permission of Opposer.

10. On information and belief, Applicant's filing of its trademark application and Applicant's use of the OFFICIAL SNACK OF FOOTBALL Mark have been with knowledge of the extensive and prior use by Opposer of the mark THE OFFICIAL SALTY SNACK OF THE NFL.

11. Opposer has priority over Applicant because its use of the mark THE OFFICIAL SALTY SNACK OF THE NFL long precedes Applicant's filing date for its Application and/or any claimed use by the Applicant of the OFFICIAL SNACK OF FOOTBALL Mark.

**COUNT I**  
**Likelihood of Confusion**  
**(15 U.S.C. § 1052(d))**

12. Opposer realleges and incorporates by reference the preceding allegations of its First Amended Notice of Opposition.

13. Applicant's OFFICIAL SNACK OF FOOTBALL Mark so closely resembles Opposer's prior use of the mark THE OFFICIAL SALTY SNACK OF THE NFL as to be likely to cause confusion, or to cause mistake, or to deceive when used in conjunction with the goods listed in the Application under Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

14. There is no issue as to priority. Applicant acquired no rights in the OFFICIAL SNACK OF FOOTBALL Mark in the United States before rights were acquired in the mark THE OFFICIAL SALTY SNACK OF THE NFL.

15. Upon information and belief, Applicant acquired no rights in the OFFICIAL SNACK OF FOOTBALL Mark before May 26, 2015.

16. The mark THE OFFICIAL SALTY SNACK OF THE NFL is distinctive for Opposer's goods and acquired distinctiveness long prior to Applicant's filing date for its Application and/or any claimed use by the Applicant of the OFFICIAL SNACK OF FOOTBALL Mark.

17. Applicant's OFFICIAL SNACK OF FOOTBALL Mark is similar in sight, sound, connotation, and overall commercial impression to the mark THE OFFICIAL SALTY SNACK OF THE NFL.

18. Applicant and Applicant's goods are not affiliated with, sponsored by, approved by, endorsed by or licensed by Opposer.

19. When encountering Applicant's OFFICIAL SNACK OF FOOTBALL Mark, consumers are likely to be confused that Applicant's goods relate to Opposer, by incorrectly assuming that either Applicant provides such goods on Opposer's behalf or that Opposer is the actual provider of such goods.

20. Applicant's goods are identical or highly related to Opposer's goods. Applicant's goods are identified without any limitations in intended uses or users, and, on information and belief, will have at least some of the same uses and/or users, and/or will be distributed to at least some of the same classes of consumers and through at least some of the same channels of trade as Opposer's goods. As applied to such goods, Applicant's OFFICIAL SNACK OF FOOTBALL Mark so resembles the mark THE OFFICIAL SALTY SNACK OF THE NFL as to be likely to cause confusion, or to cause mistake or to deceive as to the source of the goods.

21. If Applicant is permitted to use and register the OFFICIAL SNACK OF FOOTBALL Mark in connection with Applicant's goods, confusion in trade resulting in irreparable damage and injury to Opposer would be caused by reason of the similarity between Applicant's OFFICIAL SNACK OF FOOTBALL Mark and the mark THE OFFICIAL SALTY SNACK OF THE NFL. Furthermore, any defect, objection or fault found with Applicant's goods marketed under the OFFICIAL SNACK OF FOOTBALL Mark would necessarily reflect upon and seriously injure the reputation which has been established for the goods sold under the mark THE OFFICIAL SALTY SNACK OF THE NFL.

22. Because Applicant's OFFICIAL SNACK OF FOOTBALL Mark is likely to cause confusion with Opposer's use of the mark THE OFFICIAL SALTY SNACK OF THE NFL, it is not entitled to registration pursuant to Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

**COUNTS II AND III**  
**Applicant's Mark is Deceptive / Deceptively Misdescriptive**  
**(15 U.S.C. § 1052(a) / 1052(e)(1))**

23. Opposer realleges and incorporates by reference the preceding allegations of its First Amended Notice of Opposition.

24. Applicant's OFFICIAL SNACK OF FOOTBALL Mark is deceptive and deceptively misdescriptive because it misrepresents the character, quality, function, composition or use of Applicant's goods because it falsely describes Applicant's goods as "the official snack of football," which is very frequently associated by consumers and the general public with the NFL's professional football games, football teams, athletes, venues and events, and/or Opposer or Opposer's goods.

25. The wording in Applicant's OFFICIAL SNACK OF FOOTBALL Mark creates an impression that Applicant's goods have been officially endorsed by or are connected with the NFL or Opposer or other officially licensed football properties. It is likely to mislead and confuse consumers into believing that Applicant is a snack sponsor of the NFL, which is incorrect, or somehow affiliated with or sponsored by Opposer, which is a genuine snack sponsor of the NFL, when in fact Applicant is not affiliated with or sponsored by Opposer.

26. Describing its products through use of the phrase "official snack of football" is likely to mislead consumers to believe that Applicant and its products have been fully endorsed by, sponsored by, or is otherwise connected with the NFL, football teams, college teams, athletes, venues and events, and/or Opposer or Opposer's goods.

27. Because Applicant's Mark is deceptively misdescriptive of snack foods, it is not entitled to registration on the Principal Register pursuant to Section 2(e)(1) of the Lanham Act, 15 U.S.C. § 1052(e)(1).

28. Use of the phrase "official snack of football" misrepresents Applicant's sponsorship status and therefore would materially affect a consumer's decision to purchase Applicant's goods. A consumer would incorrectly interpret the OFFICIAL SNACK OF FOOTBALL Mark to designate that Applicant's goods are sponsored, licensed or endorsed by the NFL and/or Opposer or other officially licensed football properties. Therefore, the OFFICIAL SNACK OF FOOTBALL Mark is deceptive.

29. Because Applicant's OFFICIAL SNACK OF FOOTBALL Mark consists of deceptive matter, it is not entitled to registration pursuant to Section 2(a) of the Lanham Act, 15 U.S.C. § 1052(a).



## CONCLUSION

30. If Applicant is granted registration for the OFFICIAL SNACK OF FOOTBALL Mark for the goods identified in the Application, Applicant would thereby obtain a *prima facie* exclusive right to use such mark, and such registration would be the source of irreparable damage and injury to Opposer.

WHEREFORE, Opposer prays that this Opposition be sustained, that registration be denied to Applicant on its Application Serial No. 86/641,232 and that the Board grants all further relief favorable to Opposer that is necessary and just in these circumstances.

Dated: November 15, 2016

/s/ Adam Weiss

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### **CERTIFICATE OF FILING**

I hereby certify that this FIRST AMENDED NOTICE OF OPPOSITION was filed electronically through the TTAB's ESTTA (Electronic System for Trademark Trials and Appeals) system, on November 15, 2016.

Dated: November 15, 2016

/s/ Adam Weiss

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### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true copy of the attached "FIRST AMENDED NOTICE OF OPPOSITION" has been served upon Applicant's attorney of record by first class mail, postage prepaid, on November 15, 2016, addressed to the following:

ANGELA ALVAREZ SUJEK  
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Dated: November 15, 2016

/s/ Adam Weiss

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